

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA L. RELOJ and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Reno, NV

*Docket No. 01-1230; Oral Argument Held March 6, 2003;
Issued May 6, 2003*

Appearances: *Maria L. Reloj, pro se; Miriam D. Ozur, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for reconsideration.

On July 26, 1988 appellant, then a 45-year-old registered nurse, sustained a traumatic injury in the performance of duty, which the Office accepted for cervical strain, hematoma left deltoid and a loose second incisor. The Office later expanded appellant's claim to include post-traumatic stress disorder.¹

On February 4, 1994 appellant filed a claim for recurrence of disability (Form CA-2a), alleging that she sustained a recurrence of disability on May 16, 1993, causally related to her July 26, 1988 employment injury. That same day, appellant also filed a traumatic injury claim (Form CA-1), alleging that she sustained injuries on May 2, 1993, while assisting a patient in the shower.

By decision dated August 30, 1994, the Office denied appellant's claim for recurrence of disability as well as her claim for a traumatic injury, allegedly sustained on May 2, 1993. In a decision dated June 10, 1996, the Office hearing representative affirmed the August 30, 1994 decision. Appellant subsequently requested reconsideration on three occasions. The Office denied modification on September 3, 1997 and September 2, 1999. Appellant filed her third and

¹ Appellant is currently receiving wage-loss compensation for disability due to her accepted condition of post-traumatic stress disorder.

most recent request for reconsideration on September 2, 2000. By decision dated December 22, 2000, the Office denied appellant's request for reconsideration.²

The Board finds that the Office properly denied appellant's request for reconsideration.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

Appellant's September 2, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant referenced six attachments in her September 2, 2000 request for reconsideration. Attachments one, two and two(a) refer to medical documentation from Dr. Robert Yancy and Dr. Hahn. Attachments three, four and five refer to correspondence from Lorene A. Connel, an employing establishment personnel officer. However, attachment one was the only document actually received in conjunction with appellant's September 2, 2000 request for reconsideration. Dr. Yancy's March 6 and May 9, 1994 reports and the hearing examiner's April 28, 1984 request for clarification, were already included in the record. Appellant submitted this same information as attachment 17 of her September 1, 1998 request for reconsideration. Therefore, it is duplicative of evidence already submitted. This evidence was specifically addressed by the Office in a May 19, 1994 decision denying appellant's request for a change of physician. The Board finds that the evidence does not constitute "relevant and pertinent new evidence" and is insufficient to warrant reconsideration of the prior decision.⁵ Accordingly, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. *Marilyn F. Wilson*, 51 ECAB 234, 235 (1999). The instant appeal is dated March 21, 2001 and was received by the Board on March 28, 2001. As such, the Board does not have jurisdiction over the Office's September 2, 1999 merit decision.

³ 20 C.F.R. § 10.606(b)(2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's September 2, 2000 request for reconsideration.

The December 22, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 6, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member